No. 91-905

In The

Supreme Court of the United States

October Term, 1991

WILLIAM P. BARR, ATTORNEY GENERAL OF THE UNITED STATES, et al.,

Petitioners,

vs.

JENNY LISETTE FLORES, et al.,

Respondents.

On Writ Of Certiorari To The Court Of Appeals For The Ninth Circuit

BRIEF FOR SOUTHWEST REFUGEE RIGHTS PROJECT, IMMIGRANT LEGAL RESOURCE CENTER, AND THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE

Amici seek to secure the protection of immigrant children's right to liberty, and ensure that the Court understands the abhorrent conditions faced by children detained by the Immigration and Naturalization Services ("INS") while they await deportation hearings. The government's claimed interest in protecting the welfare of children is not served by incarcerating them -- often for indefinite periods of time -- in INS detention facilities, but by allowing children to be released to relatives or to other responsible adults willing to care for them pending their hearings. It is for these reasons the amici curiae have a substantial interest in this case.

The Southwest Refugee Rights Project is a joint project with the Tucson Ecumenical Council Legal Assistance ("TECLA"), Tucson, Arizona, and the Central American Refugee to Central Americans, Los Angeles, California. The Southwest Refugee Rights Project works directly with children and adults detained at various INS facilities in the Southwest.

Immigrant Legal Resource Center ("ILRC") is a public interest immigration law organization that provides counseling, training, and educational materials to non-profit organizations and agencies that assist or represent indigent immigrants. In addition, the ILRC provides legal representation to a number of immigrants. The ILRC and the several groups it advises advocate on

behalf of non-citizen children in INS detention, both in California and Texas.

The Mexican American Legal Defense and Educational Fund ("MALDEF"), established in 1967, is a national civil rights organization headquartered in Los Angeles. One of its principal objectives is to secure, through litigation and education, the civil rights of Latino immigrants in the United States. Towards this end, MALDEF has helped to ensure the rights of undocumented children in such cases as Plyler v. Doe, 457 U.S. 702 (1982).

These parties have consented to the filing of this brief pursuant to Supreme Court Rule 32.

SUMMARY OF ARGUMENT

Despite the abhorrent conditions of detention facilities, the INS has

maintained a policy of detaining children who could be released to responsible adults or child welfare agencies. These children have committed no crime, pose no danger to society or to themselves and are forcibly detained indefinitely as they await the determination of their immigration proceedings. Each of these children has a responsible adult willing to accept custody and provide care, but because INS maintains its blanket policy of incarceration, the caretakers are not permitted to demonstrate their fitness and these children are relegated to imprisonment. The blanket detention policy violates the children's due process rights and is detrimental to the children's general welfare.

The children have a liberty interest expressly protected by the Constitution.

The individual child's interest in liberty outweighs any asserted interest the government may have in maintaining its blanket policy of detaining these children for indefinite periods of time. While the INS raises as its purported justification for this policy its concern for the general welfare of the children, in fact its failure to make individualized determinations regarding the release of an individual child is motivated by little more than the agency's administrative convenience.

The INS's contention that the children are better served by detention than by release to a responsible adult is not supported by the very harsh realities of the conditions of these detention facilities. Moreover, INS's position disregards all child welfare expert

opinion and the congressional policy embodied in federal juvenile justice laws that incarceration does not as a general rule promote the best interests of the child. The Due Process Clause mandates that there be individualized determinations concerning the continued detention of the child.

ARGUMENT

I. THE CHILDREN'S LIBERTY INTEREST EXPRESSLY PROTECTED BY THE CONSTITUTION OUTWEIGHS ANY ASSERTED GOVERNMENTAL INTEREST IN MAINTAINING A BLANKET POLICY OF DETAINING CHILDREN BEFORE DEPORTATION HEARINGS.

Amici concur fully with the legal analysis articulated by Respondent children. An individual's liberty interest in freedom from institutional restraints is a right protected under the Due Process Clause. Foucha v. Lousiana, 60 U.S.L.W. 4359 (U.S. May 18, 1992) (No.

90-5844); Youngberg v. Romeo, 457 U.S. 307, 316 (1982). This right is applicable to all individuals in the United States regardless of their age or immigration status. See In Re Gault, 387 U.S. 1, 13 (1967); Mathews v. Diaz, 426 U.S. 67, 77 (1976).

In determining the constitutionality of governmental restrictions on liberty, the Court must assess the legitimacy and strength of the government's interest and then must balance "the individual's interest in liberty against the [government's] asserted reasons for restraining individual liberty." Youngberg v. Romeo, 457 U.S. at 320. The INS maintains that the child's interests would be better served by incarceration than by release to a responsible adult. See Brief for the Petitioners at 27

("Pet. Br."). As discussed below, the terms and conditions of the children's confinement belie the government's alleged interest in the children's welfare. Rather than a concern for the general welfare of the children, the INS's true interest in refusing to release these children to unrelated adults without individualized determinations as to responsibility of the adult is mere administrative convenience. The blanket refusal to make individualized determinations in the guise of administrative expediency, however, cannot pass constitutional muster. See Reed v. Reed, 404 U.S. 71, 76-77 (1971) (administrative convenience does not justify a policy that otherwise runs afoul of the Constitution). The position of the INS in this litigation --

that detention of children in INS jails is safer and better for the children than release to a non-immediate relative or an adult who is willing to assume responsibility for the child -- is directly contrary to the consensus of opinion from those with great expertise in children's welfare issues. See 171 Clerk's Record 553 ("CR").

In addition, INS's policy favoring institutionalization stands in stark contrast to federal laws governing detention of federal youth offenders. There is a congressional policy strongly disfavoring institutionalization. See Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5034; 5035; 5039 (federal magistrate shall release children to parents, guardian or other responsible party).

In comparison to the cases where the Court has found the governmental interests sufficient to overcome the individual's substantial interest in freedom from detention, INS's proffered reasons here ring hollow. For instance, in U.S. v. Salerno, 481 U.S. 739 (1987), this Court recognized that the government's legitimate and compelling interest in detaining for strictly limited periods of time arrestees whom the government had individually determined posed an identified and articulable threat to an individual or the community outweighed the arrestee's liberty interest. See also Schall v. Martin, 467 U.S. 253, 264 (1984) (state has legitimate and compelling state interest in protecting the community from crime and children from possible injury

while committing a crime to justify brief detention after individualized determination). In this case, INS seeks to justify the blanket pre-hearing detention of children who it admits present no threat to themselves or to the community. Pet. Br. at 3. Nor does the government contend that the detention is justified because these children pose any risk of flight.

Even if the government demonstrates valid reasons for restraining an individual's liberty, the government must also convince the Court that its detention policy is reasonable and not excessive in light of the individual's liberty interest. Youngberg v. Romeo, 457 U.S. at 322; Schall, 467 U.S. at 269. The INS cannot meet that standard because of the blanket nature of its policy.

Because this blanket policy automatically categorizes unrelated adults as unfit to take custody of a minor, and has no procedure to show such fitness, the detention policy is, on its face, excessive for its asserted purpose. This Court has unequivocally found constitutionally justifiable only those statutes which have adequate procedural safeguards. Salerno, 481 U.S. at 751 (statute required full adversarial hearing to convince neutral decisionmaker by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person); Schall, 467 U.S. at 277 (pre-trial detention of juvenile permitted based upon finding of serious risk that

child may commit crime).[1]

Indeed, the "significant interest" of the children in their liberty in Schall was protected by a prompt, impartial, and individualized determination of the need for their detention. This is precisely what both the district court and the court of appeals held to be appropriate to guarantee that these children do not languish incarcerated through no fault of their own.

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[1]The detentions found permissible by this Court, unlike those faced by the children in INS custody were all strictly limited in time. See U.S. v. Salerno, 481 U.S. 739, 747 (1987); Schall v. Martin, 467 U.S. 253, 269 (1984). Indeed, this Court has recently stricken as unconstitutional a statute permitting indefinite confinement in a mental facility. Foucha v. Louisiana, 60 U.S.L.W. 4359, 4362 (U.S. May 18, 1992) (No. 90-5844).

II. EVEN UNDER INS'S ANALYSIS, THE COURT SHOULD FIND THAT THE CONDITIONS OF DETENTION EXISTENT AT THE TIME THE CASE WAS BROUGHT WERE PUNITIVE AND EXCESSIVE IN RELATIONSHIP TO INS'S STATED PURPOSE OF ENSURING THE CHILDREN's WELFARE.

Even if INS could demonstrate that it seeks to promote a legitimate interest in ensuring the welfare of children, this Court must determine whether the "terms and conditions of confinement are . . . in fact compatible with those purposes." Schall, 467 U.S. at 269. The Constitution does not, under these circumstances permit the imposition of conditions which are punitive. Id. See also Foucha v. Louisiana, 60 U.S.L.W. at 4362-4363. The conditions of confinement for children in detention are severe and excessive.

The record before the district court and this Court is replete with examples

of the abhorrent conditions endured by children in INS detention centers. For example, at the time this action was brought, INS maintained a policy of routinely strip searching children who had been detained for violating immigration laws, both upon their admission to INS detention facilities and after visits with non-attorneys. The district court, on a summary judgment motion, found that this strip search policy violated the children's Fourth Amendment rights absent a reasonable suspicion that the search would yield weapons or contraband. Flores v. Meese, 681 F. Supp. 665, 669 (C.D. Cal. 1988).

In addition, children in INS detention were routinely forced to share sleeping quarters, bathrooms, and other common areas with unrelated adult

prisoners of both sexes. At the Eclectic Communications, Inc., in El Centro, California, with whom INS contracts for children detention services, young unaccompanied boys were mixed with adult women. 159 CR 351. Children and adults shared the same unpartitioned showers. Adult women and children shared the same toilets, which also lacked partitions and provided no privacy. Id. at 353. There were no physical barriers between the male and female sleeping areas at INS detention facilities in Hollywood, California, 77 CR 686, or Inglewood, California. 160 CR 356-57. Similar practices prevailed at still other facilities. Id. at 271.

Children in INS jails were routinely denied the right to visit with their families and friends. Children

incarcerated at the Casa San Juan facility in San Diego, California were barred from ever seeing their family members while in detention. 163 CR 1070. At the Staging Area in San Diego, the INS never told the children detainees that they could receive visitors. 160 CR 311.

The INS conceded that incarcerated children receive few or no educational services or reading materials. The vast majority of children in INS detention received no educational instruction at all because, as a top INS official put it, "[i]t is not [an INS] function. It would be costly." 76 CR 403. The INS admitted that seven of the twelve facilities in which minors were most often held provided youngsters no educational instruction whatsoever. Those facilities accounted for over 64

percent of all detained juveniles. 78 CR 1159.

Children in INS detention have had little or no recreation. As one INS jailer testified, children in his facility could only "play in the dirt," or go out in the desert summer "and let their tongue[s] hang out in the heat." 159 CR 201.

A majority of the Central American minors detained by INS have experienced traumatic events, such as rape, physical assault, forcible removal from their homes, or forcible recruitment into a combatant group. A study of Central American minors documented Post-Traumatic Stress Disorder ("PTSD"), depression and suicidal tendencies to be customary disorders exhibited by children held in

INS detention centers.[2]

INS detention facilities are for the most part, incapable of diagnosing, let alone appropriately dealing with children suffering psychological disorders. According to a report published in May of 1992 by Americas Watch, an organization which monitors and reports on the status of human rights, the INS has sent children displaying symptoms of PTSD to juvenile halls where they receive little or no psychological care. In the case of Jesús, a 15-year-old Guatemalan who exhibited bizarre and sometimes disruptive behavior, INS reacted by

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[2]Rodriguez and Urrutia-Rojas, Undocumented and Unaccompanied: A Mental Health Study of Unaccompanied Immigrant Children from Central America, University of Houston, 1990, at 58-59, Appendix to Brief Amicus Curiae of Immigrant, Refugee and Civil Rights groups, Exhibit 1 (Appendix to Amicus Brief, Ninth Circuit).

transferring him from one facility to another, including to juvenile halls hundreds of miles from his attorney, and to an adult detention center where he was shackled to his bed.[3]

Based on the factual record before the Court, the conditions for children in detention were punitive and excessive because the children's health and welfare were being seriously injured.

III. EVEN IF IT WERE APPROPRIATE FOR THIS COURT TO MAKE A DETERMINATION BASED ON DETENTION CONDITIONS AS THEY EXIST TODAY, THE GOVERNMENT'S MISREPRESENTATIONS MANDATE THAT THIS

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[3]Human Rights Watch, Brutality Unchecked: Human Rights Abuses Along the U.S. Border with Mexico: An Americas Watch Report at 73 (1992) (Brutality Unchecked) (citing Letter from Edward J. Flynn, attorney, to Omer Sewell, INS district director, dated July 12, 1989; Rebecca Thatcher, "Teen aliens reported shackled to beds," The Brownsville Herald, July 23, 1989.).

COURT REMAND TO THE DISTRICT COURT TO MAKE APPROPRIATE FINDINGS.

Petitioners contend with no substantiation that current conditions are precisely as set forth in the settlement agreement reached by the parties in 1987. Petition for Writ of Certiorari ("Petition") at 6-8 and 21, (Pet. Br.) at 11-13 and 32 n.31.[4] They contend that the Community Relations Service has, on INS's behalf, "implemented a detailed program designed to further every significant aspect of the child's welfare." Petition at 21. Yet Petitioners cite no evidence to support this contention. In fact, there

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[4]The settlement called for the INS to reform detention conditions as specified in the settlement beginning no later than June 1, 1988. See Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention, No. 85-4544-RJK (Px) (C.D. Cal. Nov. 30, 1987) at 2., Petitioners Appendix 148a-205a.

is no evidence in the record to support their dubious contention.

It is proper, and in fact obligatory, for Petitioners to apprise the Court of new developments. Fusari v. Steinberg, 419 U.S. 379, 390 (1975) (Burger, C.J., concurring). However, in addition to advising the Court of the settlement, they have asked the Court to assume that they have fully complied with its terms. This is asking too much.

It would be more appropriate to allow additional evidence to be heard by the trial court. Where, as here, findings are inadequate, the case should be remanded to permit taking of additional evidence, if offered, and to make findings and conclusions as required by Rule 52 of the Federal Rules of Civil Procedure. Woods Const. Co. v. Pool

Constr. Co., 314 F.2d 405 (10th Cir. 1963). See also Girard Trust Co. v. Windt, 178 F.2d 359 (2d Cir. 1949) (cause remanded with instructions to make essential findings and to hear any additional evidence that the parties might offer where the evidence was conflicting and unsatisfactory, and the court had not made findings covering all matters at issue).

Petitioners assert that the INS not only has fully implemented the agreement, but that it also **"generally has adhered to the policies set forth in Child Care Memorandum on a nationwide basis."**[5] Pet. Br. at 11 n.15 (emphasis added).

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[5]This is a reference to the "Alien Minors Shelter Care Program - Description and Requirements," (April 28, 1987), which is incorporated by reference into the settlement agreement. Memorandum of Understanding at 2. See Pet. App. 148a-205a.

See also Petition at 7 n.8 ("Although the decree by its terms governs only the Western Region, INS practices throughout the country generally follow the terms of the decree."). As organizations with particular knowledge of INS detention practices and conditions, amici wish to inform the Court that this description of current conditions is grossly inaccurate. Amici wish to avoid the manifest injustice that would occur were the Court to assume the accuracy of Petitioners' description and rely on such an assumption to support a ruling in this case.

In fact, INS's own records indicate that it has failed to implement the settlement agreement. See INS's contract with the Cochise County Children's Center

in Huachuca City, Arizona at Appendix 1.[6]

The contract, which contains only four pages of text, fails to refer to the settlement agreement. The contract by its terms fails to provide for family reunification services, comprehensive needs assessments, recreational and educational services, access to religious services, and counseling -- all elements of the settlement agreement which

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[6]Intergovernmental Service Agreement Between Chochise County Child Center [. . .] Huachuca City, Arizona and U.S. Department of Justice Immigration & Naturalization Service [. . .], Western Regional Office, Laguna Niguel, California for Detention of US INS Prisoners by the Chochise County Child Center (Effective Sept. 1, 1990)(Errors in the original reprinted).

This contract was disclosed by the INS pursuant to the Freedom of Information Act, 5 U.S.C. § 552. As an official agency record, the contract may be judicially noticed. See Massachusetts v. Westcott, 431 U.S. 322, 323 n.2 (1977) (Court judicially notices fact that respondent held a fishing license).

Petitioners claim to this court to have implemented. Pet. Br. at 11-13 and n.15; Petition at 7-8.

Other sources, including documents in the public record, contradict INS's allegations regarding current conditions in the detention center. These sources further demonstrate that, at the very least, Petitioners' assertions raise substantial questions of fact.

For example, one of the primary contentions underlying Petitioners' assertion that detention conditions are nonpunitive is that, rather than being kept in correctional institutions, children are placed within 72 hours of apprehension in "special child-care facilities supervised by the Department of Justice." Pet. Br. at 2-3. According to Petitioners, these facilities are

"specially designed to deal with the complex needs of unaccompanied alien juveniles . . ." Pet. Br. at 20.

In fact, INS freely and routinely places minors in juvenile correctional facilities. Brutality Unchecked at 71. Hearings conducted by a California legislative committee in July of 1990 contain testimony attesting to the detention of minors by INS at two juvenile halls in California. See California Legislature, Joint Committee on Refugee Resettlement, International Migration and Cooperative Development, "Joint Interim Hearing On Impact of INS Policies and Reforms," (July 19, 1990), Transcript at 29, ("Joint Interim Hearing") Flores v. Meese, No. 88-6249 (9th Cir. filed 1988) (Brief Amicus Curiae of Immigrant, Refugee and Civil

Rights groups, Ninth Cir., March 1, 1991, (Appendix to Amicus Br., Ninth Cir.), Exhibit 14. Accounts in various periodicals have similarly reported INS's detention of minors at juvenile justice facilities in recent years. See e.g., "Los Lunas Detains Illegal Teen Immigrants," Albuquerque Tribune, April 6, 1989; "Jailing of Juveniles for INS Criticized," Albuquerque Tribune, May 10, 1989; "For Salvador's Kids, Yuma is Hell," Tucson Citizen, Nov. 17, 1989, see App. to Amicus Br., Ninth Cir., Exhibits 7, 8, 12.

The Americas Watch report refers to INS's detention of minors at the Yuma County Juvenile Court Center in Arizona, the Santa Cruz County Juvenile Detention Center in Arizona, and the Imperial County Juvenile Hall in California. The

report states that in juvenile justice facilities:

> youths detained by the INS are grouped together with youths accused of crimes. In recent years, the INS has detained hundreds of youths at such facilities . . . . At the Yuma County Juvenile Court Center in Arizona, minors in INS custody are required to wear uniforms and sit quietly at a table most of the day. They are under constant surveillance by a guard. The facility employs no caseworkers, has no family reunification program, and has no meaningful recreational or educational activity.

Brutality Unchecked at 71. The report also concludes that juvenile justice facilities used by INS ignore court orders applicable to individuals in INS custody, including the order of the district court below banning routine strip searches of undocumented minors, Flores v. Meese, 681 F. Supp. 665, 669

(C.D. Cal. 1988).[7] Brutality Unchecked at 72. For example, in April of 1992, a 15-year-old Guatemalan boy was subjected to a strip search at the Santa Cruz County Juvenile Detention Center in Nogales, Arizona where he was held overnight. "The Yuma County Juvenile Court Center also continued to routinely strip-search undocumented minors long after the federal court decision" in this action. Brutality Unchecked at 72.

The articles cited supra at 29 detail similarly stark, harsh detention conditions. These accounts cast doubt on, or at least place in dispute, INS's bald assertions that it ceased using juvenile justice facilities upon entering into the settlement agreement and has

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[7]The government did not appeal this order.

since then provided children with the special services detailed in the agreement.

Conditions at other types of contract facilities used by INS also cast serious doubts upon Petitioners' contention that INS has fully implemented the settlement agreement. A private facility used by INS in Imperial, California to detain minors was criticized for severe abusive disciplinary practices, including the use of handcuffs and shackles, forced exercise, and lengthy confinement to a punishment room in hearings before California's State Legislature. Joint Interim Hearing at 4, 21. In addition, four INS officers were sued for beating and psychologically abusing minors at the facility during separate incidents in

1990. Garcia v. United States, CV 91-0908-GT (S.D. Cal. filed 1991).

Furthermore, while Petitioners correctly state that the settlement agreement requires INS to provide children with education in six basic areas by state-certified teachers in a structured classroom setting, (Pet. Br. at 13) the Americas Watch report found that this has not been done. Brutality Unchecked at 72. Educational programs at INS facilities do not offer the full range of subjects specified in the agreement. Indeed at one particular facility where classes were taught by an uncertified teacher, instruction was held only three hours per day, and sometimes classes were not held at all. Id.

While the Court may properly acknowledge that INS has bound itself to

improve the deplorable conditions which existed at the time this case was filed, it would be inappropriate for the Court to assume that conditions have actually improved. If this Court should decide that current conditions in the detention facilities are relevant to its determination of the constitutionality of the policy, the Court should remand to the district court for further findings of fact. See, Patterson v. Alabama, 294 U.S. 600, 607 (1935) (remand appropriate where change in circumstances arising since judgment has bearing on the disposition).

CONCLUSION

Amici curiae in support of Respondent children respectfully request that this Court affirm the decision

below, finding a violation of the children's due process rights by Petitioners, or in the alternative, direct that this remanded matter be to the district court for further findings of fact.

RESPECTFULLY SUBMITTED this 29th day of June, 1992.

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APPENDIX TO BRIEF FOR SOUTHWEST REFUGEE RIGHTS PROJECT, IMMIGRANT LEGAL RESOURCE CENTER, AND THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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Intergovernmental Service Agreement Between Chochise (sic) County Child (sic) Center and U.S. Department of Justice Immigration & Naturalization Service For Detention of US INS Prisoners by the Chochise (sic) County Child (sic) Center (Sept. 1, 1990)..... 1

Intergovernmental Service Agreement

Between

Chochise County Child Center
P.O. Box 4338
Huachuca City, AZ 85616

and

U.S. Department of Justice
Immigration & Naturalization Service
Western Regional Office
P.O. Box 30080
Laguna Niguel, CA 92607-0080

For

Detention of US INS Prisoners by the

Chochise County Child Center

Agreement Number: WRO J-031

Effective Date: September 1, 1990

Immigration & Naturalization Service
Agreement Schedule

Article I - Purpose

The purpose of this Intergovernmental Service Agreement is to establish a formal binding relationship between the U.S. Immigration & Naturalization Service (USINS) and the Chochise County Child Center for the detention at the Chochise County Child Center of persons found to be in violation of the Immigration & Nationality Act and related criminal statutes.

Article II – Covered Services

The housing, safekeeping, and subsistence of USINS detainees in accordance with the contents of this agreement. The unit of service will be the Detained Day and the cost per unit is established by the County at $ 47.27 per Detained Day. The types of detainees will be non-juvenile males. The duration of service to be provided will be overnight holds, daily, and long term. Females will be accepted only on an emergency basis. The Contractor certifies that the unit price is not higher than the standard rate charged to any other purchaser of similar services.

Article III – Support and Medical Services

The Contractor agrees to accept and provide for the secure custody, care and safekeeping of USINS detainees

in accordance with state and local laws, standards, policies, procedures, or court orders applicable to the operations of the facility. The Contractor agrees to provide USINS detainees with the same level of medical care and services provided local prisoners, including the transportation and security for detainees requiring removal from the facility for emergency medical services. All costs associated with hospital or health care services provided outside the facility shall be submitted through the Contracting Officer's Technical Representative, John Elton, SBPA, in the form of an original invoice(s) for direct payment by the USINS. The Contractor further agrees to notify the USINS as soon as possible of all emergency medical cases requiring removal of a detainee from the facility and to obtain prior authorization for removal for all other medical services required, with the exception that prior USINS authorization need not be obtained for the removal of USINS detainees for medical services at outpatient clinics or other local hospitals.

Article IV – Receiving and Discharging Detainees

In receiving or discharging USINS detainees from the facility, the Contractor agrees to receive and discharge such detainees only to and from persons presenting proper USINS credentials. USINS detainees shall not be released from the facility or placed into the custody of state or local officials for any reason except for medical or emergency situations. USINS detainees sought for state or local court proceedings may be acquired only with the concurrence of the USINS. The Contractor has the right to

reject or request the immediate removal of any detainee from the facility if the subject exhibits violent or disruptive behavior.

Article V – Period of Performance

This agreement shall remain in effect indefinitely until terminated by either party upon 60 days written notice. Should conditions of an unusual nature occur making it impractical or undesirable to continue to house detainees, the Contractor may suspend or restrict the use of the facility by giving written notice to the USINS. Such notice will be provided 60 days in advance of the effective date of formal termination.

Article VI – Economic Price Adjustment

1. Payment rates shall be established on the basis of actual costs associated with the operation of the facility during a recent annual accounting period or upon an approved annual operating budget. Cost Information shall be provided on the attached Addendum, Cost Per Detainee.
2. The rate may be renegotiated not more than once per year, after the agreement has been effective for twelve months.
3. The Contractor may initiate a request for a rate increase or decrease by notifying the USINS in writing at least 60 days prior to the desired effective date of the adjustment. The Contractor agrees to provide additional cost information to support a rate increase and to permit an audit of accounting records upon request of the USINS.

4. Criteria used to evaluate the increase or decrease in the per-capita rate shall be those specified in the Federal cost standards for contracts and grants with State and local Governments issued by the Office of Management and Budget.
5. The effective date of the rate modification will be negotiated and specified on the modification form approved and signed by a USINS Contracting Officer. The effective date will be established on the first day of the month for accounting purposes. Payments at the modified rate will be paid upon the return of the signed modification by the authorized local official to the USINS.
6. Unless other justifiable reasons can be documented by the Contractor, per diem rate increases shall not exceed the National Inflation Rate as established by the U.S. Department of Commerce.

VII – Financial Provisions

1. The billing address of the USINS office using the facility is as follows:

   U.S. Immigration & Naturalization Service
   Attn: Deportation Unit
   Federal Building, 230 North First Avenue
   Phoenix, AZ 85025

After certified true and correct by the above office, relating invoices will be forwarded to the following address for payment.

U.S. Immigration & Naturalization Service
Western Regional Office, Attn: ROBUD
P.O. Box 30110
Laguna Niguel, CA 92607-0110

2. The USINS shall reimburse the Contractor at the fixed rate identified in the agreement. The rate covers one (1) person per detained day. The Government may not be billed for two (2) days when a prisoner is admitted one evening and removed the following morning. The Contractor may bill for the day of arrival but not for the day of departure.

3. The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 USC 1801) is applicable to payments under this agreement and requires the payment to the Contractor of interest on overdue payments. Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and the Office of Management and Budget Circular A-125.

4. Payment under this agreement will be due on the thirtieth (30) calendar day after receipt of a proper invoice, in the office designated to receive the invoice (paragraph 1.). The date of the check issued in payment shall be considered to be the date payment is made.

5. The original invoice shall be submitted monthly in arrears to the USINS office that has been designated to receive invoices as stated in Paragraph 1. To constitute a proper invoice the invoice must include the name, address, and phone number of the official designated payment office. In addition, it shall list each detainee, the specific dates of confinement for each, the total days to be reimbursed, the agreed upon rate per day, and the total amount billed (total days multiplied by the rate per day).

VIII – Modification/Disputes

1. Either party may initiate a request for modification to this agreement in writing. All modifications negotiated will be written and approved by the USINS Contracting Officer and submitted to the Contractor for approval.

2. Disputes, questions, or concerns pertaining to this agreement will be resolved between the USINS and the appropriate Contractor official. Unresolved issues are to be directed to the Contracting Officer, Immigration & Naturalization Service/ROSSD, Western Regional Office, P.O. Box 30080, Laguna Niguel, CA 92607-0080.

IX – Inspection and Technical Assistance

1. The Contractor agrees to allow periodic inspections of the facility by USINS. The sole purpose of said inspections will be to insure a minimally acceptable level of services for the purpose of this agreement.

Approved by:

/s/ (Illegible)
For the Contractor

/s/ Lynn P. Kentfield
Lynn P. Kentfield
Contracting Officer
(ROSSD)
Immigration &
Naturalization
Service, Western Region
P.O. Box 30080
Laguna Niguel, CA
92607-0080

INTERGOV.AGR.

8-30-90 Date — 18 Sept. 1990 Date

Fund Cite: WRO-J-031

JAIL AGREEMENTS
COST PER DETAINEE
DIRECT COST

- PERSONNEL	177,702
- FRINGE BENEFITS	51,192
- SUPPLIES, EQUIPMENT, AND SERVICES	
- FOOD	14,000
- MEDICAL	-0-
- REPAIR/MAINTENANCE	3,000
- CLOTHING/DRY GOODS	2,800
- LAUNDRY	-0-
- LIBRARY SERVICE	-0-
- MENTAL HEALTH SERVICES	-0-
- OPERATING COSTS	36,748
- OTHER Professional & outside services	3,600
INDIRECT COSTS	
- BUILDING DEPRECIATION	-0-
- EQUIPMENT DEPRECIATION	-0-
- INSURANCE	1,300
- ADMINISTRATIVE FEE/SUPPORT	54,725
TOTAL COSTS	345,067
AVERAGE DAILY POPULATION	20
COST PER PRISONER/PER DAY	47.27